

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

&

THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

RSA.No. 290 of 2006(A)

AS.327/1997 of II ADDL. DISTRICT COURT, TRIVANDRUM
OS.256/1996 of III ADDL.MUNSIFF'S COURT, TRIVANDRUM
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APPELLANTS/RESPONDENTS/DEFENDANTS

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1. CHELLAMMA SANUMATHY, RESIDING AT
THOPPIL VEEDU, T.C.NO.30/1064, PETTAH,
THIRUVANANTHAPURAM.
 2. YAMUNA, W/O. RAJENDRAN, RESIDING AT
THOPPIL VEEDU, T.C.NO.30/1064, PETTAH,
THIRUVANANTHAPURAM.
 3. RAJENDRAN, RESIDING AT THOPPIL VEEDU,
T.C.NO.30/1064, PETTAH, THIRUVANANTHAPURAM.
 4. ANITHA, RESIDING AT THOPPIL VEEDU,
T.C.NO.30/1064, PETTAH, THIRUVANANTHAPURAM.
 5. MONIYAN KUMAR, RESIDING AT
THOPPIL VEEDU, T.C.NO.30/1064, PETTAH,
THIRUVANANTHAPURAM.

BY ADV. SRI.R.S.KALKURA

RESPONDENT: APPELLANT/PLAINTIFF

P.VASANTHAKUMARI, PANAYIL PUTHENVEEDU,
THAMARABHAGAM, VAILOORKONAM, MEDICAL COLLEGE P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.M.R.ANANDAKUTTAN
SMT.M.HEMALATHA
SRI.R.S.MADHU
SRI.MAHESH ANANDAKUTTAN

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 09/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. BALAKRISHNAN NAIR & HARUN-UL-RASHID, JJ.

R.S.A.No.290 of 2006-A

Dated, this the 9th day of August, 2007

JUDGMENT

Harun-UI-Rashid, J.

The appellants herein are the defendants in O.S.No.256/1996 on the file of the IIIrd Additional Munsiff's Court, Thiruvananthapuram. The suit was filed by the respondent herein as plaintiff for permanent prohibitory injunction restraining the appellants herein from leasing out portion of the plaint schedule property to strangers, from erecting publicity boards and hoardings thereby committing waste or from doing anything which will change the lie and nature of the plaint schedule property in any manner. The appellants and respondents are arrayed herein as defendants and plaintiff respectively. The plaintiff, who is the owner of the plaint schedule property, had rented out the said property to deceased Sreedharan, who is the predecessor-in-interest of the defendants, on a monthly rent of Rs.400/-. It is averred by the plaintiff that quite contrary to the tenancy arrangement, the defendants claimed kudikidappu right over the building situated in the plaint schedule property. It has come out in evidence that the predecessor-in-interest of the defendants (Sreedharan) filed O.A.No.403/1984 claiming kudikidappu right over the building situated in the plaint schedule property, the Land Tribunal, after trial, passed an order dismissing the application. Ext.A9 is the order of the Land Tribunal. Against Ext.A9 order, the

defendants preferred appeal before the Appellate Authority as A.A.No.78/1988. The said appeal was dismissed by the Appellate Authority confirming the order of the Land Tribunal. Ext.A11 is the Appellate Authority's order. In the meanwhile the plaintiff filed R.C.P.No.98/1996 for eviction of the defendants, on the grounds of bona fide need and arrears of rent. While the Rent Control Petition was pending, the defendants made attempts to lease out a portion of the property to strangers and attempted to install publicity boards and hoardings. The plaintiff contends that they have no authority to lease out the plaint schedule property, nor have any right to induct strangers therein to install hoardings. The conduct of the defendants in sub-letting portions of the property would show their intention to enrich unlawfully by receiving huge amounts from strangers, which will remain as disputed liability and that the same will also lead to unnecessary litigations between the plaintiff and others.

2. In the suit the defendants raised all sorts of contentions. The plaintiff's title to the property and also the tenancy arrangement were denied. The defendants contended that they have got absolute right over the plaint schedule property, that the proceedings culminated before the Tribunal, as confirmed by the Appellate Authority are not binding on them and that the plaintiff has no right over the plaint schedule property.

3. The trial court, on the basis of the evidence adduced by the parties, non suited the plaintiff. The findings entered by the learned Munsiff was reversed by the Appellate Court. The Appellate Court examined the oral and

documentary evidence adduced by the parties and entered findings inter alia that Ext.A11 Appellate Order in A.A.No.78/1988 coupled with the oral testimony of PW.1 would show that the defendants have no independent right over the plaint schedule property apart from the right of Sreedharan who is the predecessor-in-interest of the defendants, that the plaintiff's apprehension that the defendants will erect publicity board and sublet the building cannot be said to be unfounded and that attempts are made by the defendants to sublet a portion of the property to strangers for erecting publicity boards and hoardings without consent. The Appellate Court considered Exts.A1 to A6 title deeds and the oral evidence and other materials to find that the plaintiff is the owner of the plaint schedule property. The Appellate Court also relied on Ext.A12 order of eviction passed by the Rent Control Court under sec.11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as the Act) for the purpose of finding that there is landlord-tenant relationship between the parties.

4. The Appellate Court found that the reasoning entered by the trial court for non-suiting the plaintiff is not sustainable on the facts and circumstances of the case. The Appellate Court examined the evidence adduced by both sides in detail and found that on the basis of Exts.A1 to A6 that the plaintiff is having title to the plaint schedule property. The Appellate Court found that the husband of the 1st defendant had filed O.A.No.403/1984 before the Land Tribunal claiming kudikidappu right over the plaint schedule property and that the said application was dismissed by the Tribunal by Ext.A9 order. The Appellate Court took notice

of the appellate order Ext.A11 produced by the plaintiff confirming Ext.A9 order passed by the Land Tribunal. The Appellate Court held that the defendants' claim of title to the property is only through Sreedharan, who is the husband of the 1st defendant and father of rest of the defendants.

5. On a reading of Exts.A9 and A11, the Appellate Court came to the conclusion that the defendants have no right over the plaint schedule property apart from the right of Sreedharan. Yet another circumstance taken note of by the Appellate Court is Ext.A12 order passed by the Rent Control Court allowing the application filed by the plaintiff, who is the landlord of the building, for eviction under sec.11(3) of the Act, which was confirmed in appeal R.C.A.No.21/2000.

6. We heard the learned counsel for the appellants and the respondent.

7. We hold that the reasoning entered by the trial court for non suiting the plaintiff is unsustainable on the facts and circumstances of the case. The Appellate Court's findings on title based on Exts.A1 to A6 and other relevant materials and circumstances are correct. The further finding that the husband of the 1st defendant had filed O.A.No.403/1984 before the Land Tribunal claiming kudikidappu right over the plaint schedule property and that the said application was dismissed by the Tribunal by Ext.A9 order which was confirmed by the Appellate Authority vide Ext.A11 order is legal and valid. The Appellate Court also rightly found that the defendants' claim of title to the property is through Sreedharan who is none other than the husband of the 1st plaintiff and father of defendants 2 and 3.

8. Today we have considered the Rent Control Revision No.243/2006 filed against Ext.A12 order and by a separate order we have confirmed the appellate order passed in the Rent Control Appeal No.21/2000. So, as a whole, the entire documents will conclusively prove that the plaintiff is the owner of the plaint schedule property and she has got every right to injunct the defendants from leasing out any portion of the said property to strangers or for erecting publicity boards, hoardings etc. No questions of law, much less any substantial questions of law, arises for consideration in this second appeal. We find no merit in the appeal.

In the result the R.S.A. fails and it is dismissed. There will be no order as to costs.

K. BALAKRISHNAN NAIR
JUDGE

HARUN-UL-RASHID,
JUDGE.

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